

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-214500**DATE:** May 23, 1984**MATTER OF:** ICSD Corporation**DIGEST:**

Protest is dismissed where question of small business bidder's responsibility is properly before Small Business Administration for possible issuance of certificate of competency.

ICSD Corporation (ICSD) protests the proposed award of a contract to F.J.W. Optical Systems, Inc. (FJW), under invitation for bids No. DAAB07-83-B-E298, a partial small business set-aside, for 3600 AN/PVS-4 housings, issued by the United States Army Communications-Electronics Command (Army), Fort Monmouth, New Jersey. We dismiss the protest.

ICSD, the third low bidder, alleges that neither FJW nor the second low bidder, which are small businesses, meet the solicitation's definitive responsibility criteria. The Army advises that the question of the responsibility of FJW was referred to the Small Business Administration (SBA) and SBA issued FJW a certificate of competency (COC). However, the Army also advises that the matter is still pending before the SBA because the Army has appealed the determination on the same basis as alleged by the protester here.

SBA has conclusive authority to determine a small business firm's responsibility by issuing or refusing to issue a COC. 15 U.S.C. § 637(b)(7)(A) (1982). Our Office will not question SBA's actions in this respect unless fraud or bad faith on the part of government officials is shown or SBA did not consider certain vital information bearing on the small business firm's compliance with definitive responsibility criteria. Tennier Industries, Inc., B-205476.3, March 1, 1982, 82-1 CPD 178. Where SBA decides that compliance with the definitive criteria is not necessary for issuance of a COC in a particular case (we have recognized that there is "no limitation on the SBA's authority which would bind that agency to the actual requirements of" definitive responsibility criteria contained in a solicitation), the "vital information" test is met so long as SBA was aware of the criteria. E-Systems, Inc., B-199550.5, February 27, 1981, 81-1 CPD 137.

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Under the facts of this protest, no fraud or bad faith has been shown and, in light of the Army's appeal of this matter, the SBA is on notice of the solicitation's definitive responsibility criteria. Therefore, there is no basis for our Office to assume jurisdiction over the matter.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel